BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SEQUOIA UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2014010346 ORDER DENYING MOTION TO CONSOLIDATE

On January 7, 2014, Student filed a request for due process hearing in Office of Administrative Hearings (OAH) case number 2014010346 (First Case), naming Sequoia Union High School District (District).

On March 4, 2014, Golden Gate Regional Center (Golden Gate) transmitted a request to OAH from Student asking for a fair hearing. The basis of this request was the apparent refusal of Golden Gate to pay for a residential treatment program for Student. This matter was assigned OAH case number 2014030093 (Second Case). [1]

On April 9, 2014, Student filed a motion in the First Case to consolidate both matters. [2] On April 16, 2014, Golden Gate filed an opposition to the motion. District filed no response.

APPLICABLE LAW

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, the Special Education Division of

[1] The Special Education Division of OAH covers cases involving special education disputes between students and school districts and other public agencies providing education services. The General Jurisdiction Division of OAH covers matters concerning regional center services, as well as many other types of cases involving state and local agencies. Generally, neither Division informs the other when cases concerning the same student are filed in both Divisions.

[2] Student sent a copy of the motion to OAH so that it would be reflected in the Second Case file, but did not ask that it be filed in that case.

OAH will generally consolidate matters that involve a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

SPECIAL EDUCATION

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . .providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

Under the Individuals with Disabilities Education Act (IDEA), the State Education Agency has the responsibility for the general supervision and implementation of the Act. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a) (2006).) This responsibility includes ensuring that a free appropriate public education (FAPE) is available to all children with disabilities in the mandated age ranges within the state. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a)(2006).) Generally, a FAPE is made available through a Local Educational Agency within the state. (20 U.S.C. § 1412(a)(12)(A); *Letter to Covall*, 48 IDELR 106 (OSEP Dec. 2006).) In the First Case, District is the Local Educational Agency within the meaning of these provisions.

REGIONAL CENTER SERVICES

Regional centers provide services under the Lanterman Act (Welf. & Inst. Code § 4400 et seq.) for developmentally disabled infants, toddlers, children and adults who qualify due to specified disabilities. Those services generally do not involve the provision of special education and related services. The services which are provided by Regional Centers are unrelated to those provided under the IDEA. Regional Centers provide daily living services and supports to persons with developmental disabilities.

DISCUSSION

Student is a 16 year old boy who has been receiving special education and related services from District, and is also Golden Gate's client. Student's complaint in the First Case against District alleges that Student is entitled to certain services that District has failed to provide him. He asks that District be ordered to provide him with an educationally related mental health services assessment. Student also requests other services that will permit him to attend school locally while living at home with Parents, or alternatively to fund a prospective residential placement for him, as well as furnishing him compensatory and requested other relief. Specifically, Student claims District has denied him a FAPE. It is the responsibility of District to provide him with a FAPE, not the responsibility of Golden Gate.

Student's request for a fair hearing in the Second Case is the result of the alleged refusal of Golden Gate to pay for a residential placement requested by Student. Student asserts that there is a commonality of facts in both cases that lead to the conclusion that the remedy in each case is residential placement. Therefore, he asserts, the First Case and the Second Case should be consolidated. Student also asserts that the First Case and the Second Case involve the same witnesses and should therefore be consolidated to further the interests of judicial economy by saving time and witness costs.

Golden Gate correctly objects to consolidation because the First Case and the Second Case do not involve common questions of law or fact. In the First Case, District has the sole responsibility for providing Student with educational services and a FAPE, which might, under certain circumstances, be residential placement. In fact, in the First Case Student initially requests relief in the form of services that will permit him to attend a local educational day program, and only requests residential placement in the alternative. In the First Case Student claims District did not offer or provide him with a FAPE, and he needs to prove this. In order to be awarded the remedy of residential placement, including educational components, Student needs to establish that he requires this placement to obtain educational benefit due to his unique needs.

In the Second Case, Student needs to prove that he requires residential placement for daily living services and support due to his developmental disabilities. Golden Gate would be responsible for the cost of residential placement, exclusive of educational services, if it was required to pay for such placement pursuant to the provisions of the Lanterman Act. The facts that would support residential placement for educational purposes, are not necessarily the same as those that would support residential placement pursuant to the Lanterman Act.

In regards to the issue of whether both cases share common law, they do not. Student's claims against Golden Gate are properly brought under the Lanterman Act. The Administrative Law Judge (ALJ) deciding the Second Case will analyze the facts in accordance with this law, and this will entail the application of entirely different legal standards than are applicable under the IDEA, which governs District's obligations to Student. Consequently, the First Case and Second Case do not share common questions of law.

Further, although Student contends that he will be calling the same witnesses for the First Case and the Second Case, he fails to show that the witnesses for the District in the First Case and for Golden Gate in the Second Case are the same. He does not provide the names or identities of proposed witnesses in either case in his motion, and does not elaborate on how each witness's testimony would be relevant in both cases.

Finally, and most important, though not elaborated upon by either Golden Gate or Student, is the fact that the procedural laws governing each proceeding are very different. For example, the timeline for a decision in a special education case is 45 days following the

conclusion of a 30 day resolution period in a student-filed matter. (Ed. Code § 56505, subd. (f)(3).) The timeline for a decision in a case pursuant to the Lanterman Act is 90 days from the date the hearing request form was received by a regional center, and the hearing must be conducted no more than 50 days after the filing with OAH. (Welf. & Inst. Code §§ 4712, subd. (a) and 4712.5, subd. (a) .)[3] Both special education law and the Lanterman Act require the parties to exchange documentary evidence prior to the hearing. However, the Lanterman Act requires such an exchange five calendar days before the commencement of the hearing, and special education law requires this exchange to occur five business days prior to the commencement of the hearing. (Welf. & Inst. Code §4712, subd. (d); Ed. Code § 56505, subd. (e)(7).) These are but two of many differences between the two statutory schemes.

In sum, the First Case and the Second Case do not involve a common question of law or fact, or the same parties, and it does not further the interests of judicial economy to consolidate these cases. Student's request to consolidate is therefore denied.

ORDER

1. Student's Motion to Consolidate is denied.

2. All hearing dates for OAH Case Number 2014010346 (First Case) and for OAH Case Number 2014030093 (Second Case) shall remain as currently set.

DATE: April 17, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

[3] Both the Education Code sections pertaining to special education hearings, and the Welfare and Institution Code sections pertaining to the Lanterman Act contain provisions regarding continuances or extensions of time which are also different.